

REMARKS

The following remarks are submitted to address the issues raised in the Office Action mailed December 10, 2002.

Claims 26-46 are currently pending in the application, new claims 42-46 having been added by the foregoing amendment. Claims 26-30 and 32-37 stand rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 2,764,984 to Cohen et al. (hereinafter "Cohen") in view of Applicant's Admitted Prior Art. Claims 26, 28-34, and 36-37 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 4,886,076 to Gilbert et al. (hereinafter "Gilbert"), further in view of Applicant's Admitted Prior Art.

Applicant has amended claims 26 and 34, and has added new claims 42-46. Support for the amendments and the new claims can be found generally on pp. 7-12 and in FIGS. 12, 14-17, and 21.

Applicant respectfully requests consideration of the application in view of the foregoing amendments and the following remarks.

Claims 26-30 and 32-37 - 35 U.S.C. § 103(a)

The rejection of claims 26-30 and 32-37 under 35 USC 103(a) as being unpatentable over Cohen in view of Applicant's Admitted Prior Art is respectfully traversed.

Cohen relates to a cigarette snuffing attachment for cigarette packages. The cigarette snuffer "consists of a frusto-conical, hollow body having an inner lamination 24 and an outer lamination 26 integral with . . . the package." Cohen, col. 1, ll. 60-63. "[T]he flexibility of the materials from which laminations 24 and 26 [of the saver] are made permits packaging of

the cigarettes 12 to the full capacity of the package 10 by folding the snuffer 20 along creases 23 and 25 into a flat collapsed condition along the innermost face of one wall of the package 10." *Id.*, col. 1, l. 66 to col. 2, l. 4. "It is only necessary, therefore, to remove but a few of the cigarettes 12 in order to expand the snuffer 22 to its frusto-conical shape as shown in Fig. 2, positioned to receive a cigarette to be extinguished." *Id.*, col. 2, ll. 4-8.

In rejecting the claims, the Examiner also cites excerpts of Applicant's specification as Admitted Prior Art. As to crush proof boxes, the Examiner cites the following excerpt: "One type of popular cigarette package is the so-called "hard pack," "crush proof box" or "hinged lid package." Such a package has a generally cuboid-type shape, is manufactured from resilient paperboard, and includes an outer wrap of transparent polypropylene film." Spec., p. 1, ll. 10-13. Regarding the size of crush-proof boxes, the Examiner cites the following excerpt: "Typical crush proof boxes are designed to include about twenty or about twenty-five cigarettes." Spec., p. 10, ll. 14-16. Applicant agrees that these statements are admissions that (1) one type of cigarette package is a crush proof boxes constructed from resilient paperboard, and that (2) crush proof boxes have been designed to include about twenty or about twenty-five cigarettes. Applicant makes no other admissions regarding these statements from its application.

The present invention advantageously utilizes a paperboard crush proof box designed to hold more than twenty cigarettes. Twenty cigarettes are arranged in the crush proof box (e.g., in a 7-6-7 arrangement as shown in the figures) with the extra space in the crush proof box providing adequate room for the cigarette saver. For example, with a crush-proof box designed to hold twenty-five cigarettes, but actually only including twenty cigarettes, the

cigarette saver occupies the space provided for five additional cigarettes. In this regard, the present invention advantageously allows a cigarette manufacturer to sell a normal number of cigarettes in a package that resembles a conventional cigarette package, but also includes a cigarette saver. *See Spec.*, p. 2.

Applicant has amended claim 26 to clarify that the cigarette saver has a cross-sectional area that corresponds to the cross-sectional area of approximately five cigarettes. Accordingly, claim 26 now includes a paperboard crush proof box designed to hold twenty-five cigarettes, a cigarette saver having a cross-sectional area that corresponds to the cross-sectional area of approximately five cigarettes, and twenty cigarettes.

Applicant respectfully submits that Cohen does not teach or suggest a cigarette package having these features. The snuffer in Cohen is made from flexible materials, which permit packaging of the cigarettes to the full capacity of the package by folding the snuffer into a flat collapsed condition along one wall of the package. *See Cohen*, col. 1, l. 66 to col. 2, l. 4 and Fig. 1. As shown in Fig. 2 of Cohen, "a few of the cigarettes" must be removed in order to expand the snuffer to receive a cigarette to be extinguished. *See id.*, col. 2, ll. 5-8 and Fig. 2. Applicant respectfully submits that Cohen does not teach or suggest a cigarette saver having a cross-sectional area that corresponds to the cross-sectional area of approximately five cigarettes as recited in claim 26. In addition, Applicant respectfully submits that neither Cohen nor the Admitted Prior Art teach or suggest a cigarette package that comprises a paperboard crush proof box designed to hold twenty-five cigarettes, a cigarette saver having a cross-sectional area that corresponds to the cross-sectional area of approximately five cigarettes, and twenty cigarettes.

For at least this reason, Applicant respectfully submits that claim 26 is patentable over Cohen in view of Applicant's Admitted Prior Art. As claims 27-30 and 32-33 depend from claim 26, Applicants likewise respectfully submit that these claims are also patentable.

Applicant has amended claim 34 to clarify that the cigarette saver is rigid and that the cigarette saver has a cross-sectional area that corresponds to the cross-sectional area of approximately three cigarettes. Accordingly, claim 34 now includes a paperboard crush proof box designed to hold twenty-three cigarettes, a rigid cigarette saver having a cross-sectional area that corresponds to the cross-sectional area of approximately three cigarettes, and twenty cigarettes.

Cohen does not teach or suggest a rigid cigarette saver. As noted above, Cohen states that its snuffer is constructed from flexible materials that permit packaging of the cigarettes to the full capacity of the package by folding the snuffer along creases into a flat collapsed condition. *See* Cohen, col. 1, l. 66 to col. 2, l. 6. The snuffer of Cohen, as described in the specification and shown in the Figures, is clearly not rigid as claimed in claim 34 of the present invention.

For at least the reason that neither Cohen nor the Admitted Prior Art teach or suggest a cigarette package comprising a paperboard crush proof box designed to hold twenty-three cigarettes, a rigid cigarette saver having a cross-sectional area that corresponds to the cross-sectional area of approximately three cigarettes, and twenty cigarettes, Applicant respectfully submits that claim 34 is patentable over Cohen in view of Applicant's Admitted Prior Art. As claims 35-37 depend from claim 34, Applicant likewise respectfully submits that these claims are also patentable.

For all of the foregoing reasons, claims 26-30 and 32-37 are not taught or suggested by Cohen and Applicant's Admitted Prior Art, and the Examiner is respectfully requested to withdraw the rejection.

Claims 26, 28-34, and 36-37 - 35 U.S.C. § 103(a)

The rejection of claims 26, 28-34 and 36-37 under 35 USC 103(a) as being unpatentable over Gilbert in view of Applicant's Admitted Prior Art is respectfully traversed.

Gilbert relates to a cigarette snuffer that can be "incorporated in a variety of applications such as an ashtray, or with a pocket clip so that it can be inserted either into a pocket, or a cigarette package or the like." Gilbert, col. 1, ll. 54-57.

As noted above, Applicants have amended claim 26 to specify that the cigarette saver has a cross-sectional area that corresponds to the cross-sectional area of approximately five cigarettes. Applicants have also amended claim 34 to specify that the cigarette saver has a cross-sectional area that corresponds to the cross-sectional area of approximately three cigarettes.

Gilbert does not teach or suggest cigarette savers having cross-sectional areas as recited in Applicant's claims. Further, Gilbert makes no reference to the size of a cigarette package, the number of cigarettes in a package, or how the cigarette snuffer might be arranged with the cigarettes in a package. The only reference in Gilbert to cigarette packages is the statement that it can be inserted into a cigarette package using a pocket clip. *See id.* A cigarette snuffer having a pocket clip is illustrated in Fig. 5 of Gilbert and has a cross-

sectional area that does not appear to be much larger than that of a single cigarette and is clearly not as large as the cross-sectional areas recited in the claims of the present invention.

For at least the reason that neither Gilbert nor the Admitted Prior Art teach or suggest a cigarette package comprising a paperboard crush proof box designed to hold twenty-five cigarettes, a cigarette saver having a cross-sectional area that corresponds to the cross-sectional area of approximately five cigarettes, and twenty cigarettes, Applicant respectfully submits that claim 26 is patentable over Gilbert in view of Applicant's Admitted Prior Art. As claims 28-33 depend from claim 26, Applicant likewise respectfully submits that these claims are also patentable.

For at least the reason that neither Gilbert nor the Admitted Prior Art teach or suggest a cigarette package comprising a paperboard crush proof box designed to hold twenty-three cigarettes, a rigid cigarette saver having a cross-sectional area that corresponds to the cross-sectional area of approximately three cigarettes, and twenty cigarettes, Applicant respectfully submits that claim 34 is patentable over Gilbert in view of Applicant's Admitted Prior Art. As claims 36-37 depend from claim 34, Applicants likewise respectfully submit that these claims are also patentable.

NEW CLAIMS

Applicants have added new claims 42-46. Support for these claims can be found generally on pp. 7-12 and in FIGS. 12, 14-17, and 21.

New claim 42 depends from claim 34 and recites that the length of the cigarette saver is less than the length of a cigarette.

New claim 43 depends from claim 26 and also recites that the length of the cigarette saver is less than the length of a cigarette.

New independent claim 44 recites a cigarette saver adapted to be inserted in a cigarette package designed to hold twenty-five cigarettes and including twenty cigarettes, the cigarette saver comprising a device having two end portions, wherein the first end portion includes an opening to a channel, wherein the device occupies a region corresponding to the volume of approximately five cigarettes.

New independent claim 45 recites a cigarette package that comprises a paperboard crush proof box designed to hold twenty-five cigarettes; twenty cigarettes; and a cigarette saver positioned inside the paperboard crush proof box and comprising two end portions, the distance between the two end portions forming a length of the cigarette saver, wherein the first end portion includes an opening to a channel that terminates in the cigarette saver and wherein the cigarette saver occupies a region corresponding to the volume of approximately five cigarettes.

New independent claim 46 recites a cigarette package comprising a paperboard crush proof box designed to hold twenty-three cigarettes; twenty cigarettes; and a rigid cigarette saver positioned inside the paperboard crush proof box and comprising two end portions, the distance between the two end portions forming a length of the cigarette saver, wherein the first end portion includes an opening to a channel that terminates in the cigarette saver and wherein the cigarette saver occupies a region corresponding to the volume of approximately three cigarettes.

Applicant respectfully requests that these claims be deemed in condition for allowance.

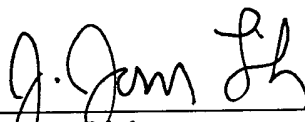
CONCLUSION

For the foregoing reasons, a favorable Office Action is respectfully solicited. The Examiner is respectfully invited to contact J. Jason Link at 336.607.7443 or Charles W. Calkins at 336.607.7315 to discuss any matter relating to this application.

Respectfully submitted,

Date: _____

March 7, 2003



J. Jason Link
Attorney for Applicant
Registration No. 44,874

KILPATRICK STOCKTON LLP
1001 West Fourth Street
Winston-Salem, NC 27101-2400
(336) 607-7443 Telephone
(336) 607-7500 Facsimile